

**American Tr. Ins. Co. v McKenzie**

2026 NY Slip Op 31537(U)

April 9, 2026

Supreme Court, New York County

Docket Number: Index No. 652056/2025

Judge: Nicholas W. Moyne

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. NICHOLAS W. MOYNE PART 41M**

*Justice*

-----X

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

LEONIE MCKENZIE, ATLANTIC MEDICAL & DIAGNOSTIC,  
P.C., BRIGHT PHYSICAL THERAPY P.C., BV NASSAU  
COUNTY PHYSICAL THERAPY P.C., BV PHYSICAL  
THERAPY P.C., CHURCH AVENUE MEDICAL  
REHABILITATION P.C., ECLIPSE MEDICAL IMAGING  
P.C., JTK CHIROPRACTIC CARE, P.C., LR MEDICAL,  
PLLC, MEDS AND BEYOND INC., MEGA DEAL GROUP  
CORP, PDA NY CHIROPRACTIC, P.C., PG  
PSYCHOLOGICAL SERVICES, P.C., QUEENS MEDICAL  
PROFESSIONAL, P.C., REGO EQUIPMENT INC, ROM  
DME INC., SUPPLIES MADE EASY INC

Defendant.

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INDEX NO. 652056/2025  
MOTION DATE 02/25/2026  
MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28

were read on this motion to/for JUDGMENT - DEFAULT.

Pursuant to CPLR 3215, plaintiff American Transit Insurance Company moves for a default judgment against defendants Atlantic Medical & Diagnostic, P.C., Bright Physical Therapy P.C., BV Physical Therapy P.C., Eclipse Medical Imaging P.C., LR Medical, PLLC, Meds and Beyond Inc., PDA NY Chiropractic, P.C., Rego Equipment Inc, Rom DME Inc., and Supplies Made Easy Inc (Default Defendants). Plaintiff does not seek a default judgment against Leonie McKenzie (McKenzie), BV Nassau County Physical Therapy P.C., Church Avenue Medical Rehabilitation P.C., JTK Chiropractic Care, P.C., Mega Deal Group Corp, PG Psychological Services, P.C., and Queens Medical Professional, P.C. Pursuant to a stipulation (NYSCEF Doc. No. 28), the motion is withdrawn as to defendant Meds and Beyond Inc., and their answer is accepted. Default Defendants have not responded to plaintiff's motion. For the reasons below, plaintiff's motion is partially granted and partially denied.

**BACKGROUND AND PROCEDURAL HISTORY**

Plaintiff issued an insurance policy to UG Imperial (NY St Cts Elec Filing [NYSCEF] Doc No. 11, plaintiff's support affirmation ¶ 5). Plaintiff's insurance policy requires, among other things, that an injured person submits to an examination under

oath (EUO) (NYSCEF Doc No. 11 ¶ 17; NYSCEF Doc No. 13, plaintiff's exhibit B, insurance policy).

On or about March 4, 2024, UG Imperial was involved in a motor vehicle accident where McKenzie was a passenger and was injured (NYSCEF Doc No. 11 ¶¶ 9; NYSCEF Doc No. 12, plaintiff's exhibit A, affirmations and affidavit of merit ¶¶ 17, 19). On May 28, 2024, McKenzie submitted a motor vehicle no-fault claim to plaintiff (NYSCEF Doc No. 14, plaintiff's exhibit C, no-fault insurance claim).

On June 18, 2024, McKenzie was mailed a letter to their address in Brooklyn, New York from plaintiff stating that their first EUO appointment was scheduled for July 24, 2024, at 9:00AM to be conducted virtually (NYSCEF Doc No. 12; NYSCEF Doc No. 16, plaintiff's exhibit E, EUO letters). On July 26, 2024, McKenzie was mailed another letter from plaintiff stating that their second EUO appointment was scheduled for September 9, 2024, at 1:00PM to be conducted virtually (*id.*). McKenzie failed to appear for the EUO appointments (NYSCEF Doc No. 12). Plaintiff denied McKenzie's no-fault claim (NYSCEF Doc No. 15, plaintiff's exhibit D, denial of claim).

On March 30, 2025, plaintiff commenced this action against all defendants by filing a summons and complaint (NYSCEF Doc No. 18, plaintiff's exhibit G, summons and complaint). The complaint seeks declaratory judgment that there is no coverage for no-fault reimbursement because of McKenzie's failure to attend the EUOs (*id.* ¶¶ 43-49). The complaint states that an EUO was required as a condition precedent for coverage (*id.*).

Plaintiff filed an affirmation of service that McKenzie was served with the summons and complaint on July 17, 2025, at their address in Brooklyn, New York and was left with a relative of suitable age and discretion (NYSCEF Doc No. 20, plaintiff's exhibit I, affirmations of service). On June 13, 2025, Atlantic Medical & Diagnostic, P.C., Bright Physical Therapy P.C., BV Nassau County Physical Therapy P.C., BV Physical Therapy P.C., Eclipse Medical Imaging P.C., LR Medical, PLLC, Meds and Beyond Inc., Mega Deal Group Corp, PG Psychological Services, P.C., Queens Medical Professional P.C., Rom DME Inc., and Supplies Made Easy Inc were served with copies of the summons and complaint when they were delivered to the New York Secretary of State's office (*id.*). On July 24, 2025, Church Avenue Medical Rehabilitation, P.C., PDA NY Chiropractic, P.C., and Rego Equipment Inc were served with copies of the summons and complaint when they were delivered to the New York Secretary of State's office (*id.*). On July 18, 2025, JTK Chiropractic Care, P.C. was served with a copy of the summons and complaint when it was delivered to its designated agent authorized to accept legal documents (*id.*).

Plaintiff filed an affidavit of mailing that on October 14, 2025, the summons and complaint was mailed to all defendants or where service is made under Business Corporation Law § 306, pursuant to CPLR 3215(g)(3) and (4) (NYSCEF Doc No. 19, plaintiff's exhibit H).

On July 22, 2025, McKenzie filed their answer (NYSCEF Doc No. 4). On July 23, 2025, Mega Deal Group Corp filed its answer with counterclaims (NYSCEF Doc No. 5). On August 13, 2025, Church Avenue Medical Rehabilitation, P.C., and BV Physical Therapy P.C. jointly filed their answer (NYSCEF Doc No. 6). On October 10, 2025, JTK Chiropractic Care, P.C., PG Psychological Services, P.C., and Queens Medical Professional, P.C. jointly filed their answer (NYSCEF Doc No. 9). On March 18, 2026, Bright Physical Therapy P.C., and Rom DME Inc. jointly filed their answer (NYSCEF Doc No. 27).

To date, Atlantic Medical & Diagnostic, P.C., Eclipse Medical Imaging P.C., LR Medical, PLLC, PDA NY Chiropractic, P.C., Rego Equipment Inc, and Supplies Made Easy Inc have not filed an answer or appeared in this action. On February 25, 2026, plaintiff moved for default judgment and filed an affirmation of service stating that all defendants received its motion for default judgment (NYSCEF Doc No. 21, default motion affirmation of service).

### DISCUSSION

On an application for default under CPLR 3215, a plaintiff must provide proof of service of the summons and complaint, proof of the facts constituting the claim, and the defendant's default in answering or appearing (see CPLR 3215 [f]; *Rosenstein v Permanent Mission of the Republic of Sierra Leone to the United Nations*, 217 AD3d 553, 554 [1st Dept 2023]; *Clarke v Liberty Mut. Fire Ins. Co.*, 150 AD3d 1192, 1194 [2d Dept 2017]). To demonstrate facts constituting a cause of action, a plaintiff must provide sufficient proof for a court to determine if a cause of action is viable (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). The court may consider the verified complaint if properly served, affidavits of merit, and affirmations submitted by the plaintiff (see CPLR 3215 [f]; *Woodson*, 100 NY2d at 71; *Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023]).

The movant of an unopposed default judgment motion bears the burden of establishing, *inter alia*, that the defendants were properly served with that motion and failed to appear (see CPLR 306; CPLR 3215 [f]; CPLR 2013). Proper service upon a defendant by delivering summons and complaint to a person of suitable age and discretion also requires, *inter alia*, that such service be mailed to the defendant at their last known address (see CPLR 308 [2]). Proper service upon an authorized domestic or foreign corporation may be made by delivering the summons and complaint to an authorized agent appointed to receive service or by delivering the summons and complaint to the Secretary of State (CPLR 311 [a] [1]; Business Corporation Law § 306). Similarly, proper service upon a limited liability company may be made by delivering the summons and complaint to a member or manager of the company or an authorized agent to receive such service, or by delivering the summons and complaint to the Secretary of State (CPLR 311-a; Limited Liability Company Law § 303).

Additionally, CPLR 3215(c) requires that if a plaintiff fails to move for an entry of judgment within one year after a default, the court cannot enter a default judgment but must dismiss the complaint as abandoned, upon its own initiative or motion, unless

there is sufficient cause to show why the complaint should not be dismissed. CPLR 3215(c) is mandatory since it requires that courts must dismiss claims when a default judgment is not sought within the one-year statutory timeframe because they will be considered abandoned (see *NYCTL 2017-A Trust v Heirs-at-Law of John Ghiselli*, 215 AD3d 427 [1st Dept 2023]).

Ultimately, there is a strong public policy to dispose of cases based on their merits rather than on a motion for default (*Mejia v Duran De La Rosa*, 210 AD3d 506, 507 [1st Dept 2022]; *HSBC Bank USA v Lugo*, 127 AD3d 502, 503 [1st Dept 2015]).

Plaintiff's motion is partially granted and partially denied. Plaintiff has supplied proofs of service of its summons and complaint upon Default Defendants, the facts within the complaint and affirmations provide proof of a viable claim since McKenzie did not attend the scheduled EUOs, and Atlantic Medical & Diagnostic, P.C., Eclipse Medical Imaging P.C., LR Medical, PLLC, Meds And Beyond Inc., PDA NY Chiropractic, P.C., Rego Equipment Inc, and Supplies Made Easy Inc have neither appeared nor filed answers. Additionally, plaintiff has supplied proof of service of its motion for default upon defendants, and plaintiff has moved for default within the statutory one-year timeframe. Thus, plaintiff's motion as against Atlantic Medical & Diagnostic, P.C., Eclipse Medical Imaging P.C., LR Medical, PLLC, Meds and Beyond Inc., PDA NY Chiropractic, P.C., Rego Equipment Inc, and Supplies Made Easy Inc (hereinafter the "Non-Answering Defendants"); is granted.

However, BV Physical Therapy P.C., Bright Physical Therapy P.C., and Rom DME Inc. filed answers, albeit late. Since there is a strong public policy to dispose of cases based on their merits rather than on a motion for default, plaintiff's motion for default as against BV Physical Therapy P.C., Bright Physical Therapy P.C., and Rom DME Inc. is denied.

WHEREFORE, it is hereby:

ORDERED AND ADJUDGED that, pursuant to CPLR 3215, plaintiff American Transit Insurance Company's motion for default judgment against defendants Atlantic Medical & Diagnostic, P.C., Eclipse Medical Imaging P.C., LR Medical, PLLC, PDA NY Chiropractic, P.C., Rego Equipment Inc, and Supplies Made Easy Inc is granted; and it is further

ORDERED that, pursuant to CPLR 3215, plaintiff American Transit Insurance Company's motion for default judgment against defendants BV Physical Therapy P.C., Bright Physical Therapy P.C., Meds and Beyond Inc., and Rom DME Inc. is denied; and it is further

ORDERED, ADJUDGED, and DECLARED, that each and every part of any arbitration or court hearing brought by the Non-Answering Defendants stemming from the alleged occurrence of March 4, 2024 involving Leonie McKenzie is permanently STAYED; and it is further

ORDERED, ADJUDGED, and DECLARED, that the Non-Answering Defendants are permanently BARRED from bringing any arbitration or court hearing stemming from the alleged occurrence of March 4, 2024 involving Leonie McKenzie; and it is further

ORDERED, ADJUDGED, and DECLARED, that all of the Plaintiffs' denials of claims made by the Non-Answering Defendants, including those annexed to Plaintiffs' motion, of all claims for No-Fault benefits stemming from the alleged occurrence of March 4, 2024 involving Leonie McKenzie are valid; and it is further

ORDERED and ADJUDGED that the American Transit Insurance Company has no duty to pay any and all Mandatory Personal Injury Protection (No-Fault), Additional Personal Injury Protection, Uninsured/Underinsured Motorist Coverage, and Supplemental Uninsured/Underinsured Motorist Coverage, any and all medical-payment claims; any/or and all bodily-injury-liability benefits, in connection with the alleged incident of DATE, involving Leonie McKenzie under claim number 1144987-01 submitted by that the Non-Answering Defendants; and it is further

ORDERED, ADJUDGED, and DECLARED, that American Transit Insurance Company is not obligated to honor or pay claims and/or bills for reimbursement submitted by the Non-Answering Defendants under claims number 1144987-01 from the alleged accident of March 4, 2024 involving Leonie McKenzie. American Transit Insurance Company is not required to provide, pay, honor, or reimburse any claims by the Non-Answering Defendants set forth herein, in any current, pending or future proceedings, including but not limited to cases in any court of the State of New York and/or arbitrations proceeding seeking to recover no-fault benefits arising under American Transit Insurance Company claims number 1144987-01 from the alleged accident of March 4, 2024 involving Leonie McKenzie; and it is further

ORDERED, ADJUDGED, and DECLARED, that the default does not apply to answering defendants and shall have no preclusive or issue determinative effect with regard to the answering defendants; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff American Transit Insurance Company shall serve a copy of this order with notice of entry upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)).

(signature on following page)

This constitutes the decision and order of the court.

  
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4/9/2026  
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					REFERENCE